BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD).No.4185 of 2022

and

W.M.P.(MD).Nos.3589 and 3590 of 2022

The Commissioner,
Thirumangalam First Grade Municipality,
No.1, Municipality Building,
Main Road, Thirumangalam,
Madurai-625 106. ... Petitioner

Vs.

1.The Deputy Commissioner (ST),
(GST Appeal),
Maduari & Tirunelveli,
Madurai District.

2.The Assistant Commissioner (ST),
Thirumangalam Circle,
Thirumangalam,
Madurai District. ...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the impugned order passed by the second respondent in Reference Number: ZA3311190132607, dated 04.11.2019 and the order of the first respondent in Appeal Number No.AP/GST/04/2022 dated 01.02.2022 and quash the same as illegal.

For Petitioner : Mr.M.Kannan

For Respondents : Mr.M.Prakash
Additional Government Pleader

ORDER

After hearing the learned counsel for the petitioner and the learned counsel for the respondents, this writ petition is disposed of at the time of admission in the light of the order passed in **W.P.Nos.25048, 25877, 12738 of 2021 and etc. batch (Tvl.Suguna Cutpiece Center Vs Appellate Deputy Commissioner (ST) (GST) and others)**, dated 31.01.2022.

2. The petitioner was served with an order dated 04.11.2019 for cancellation of Goods and Services Tax registration. The petitioner, however, filed a statutory appeal before the Appellate Commissioner, namely, the first respondent herein, beyond the statutory period of limitation and the period prescribed for condoning the delay for filing the appeal, which has culminated in the impugned order, dated 01.02.2022 in Appeal No.AP//GST/04/2022. The petitioner had a remedy to file either an application for revocation of cancellation of GST registration or file a statutory appeal under Section 107 of the Goods and Service Tax Act within a period of ninety days and with an application to condone the delay within a period of thirty days thereafter.

3. The petitioner has filed an appeal on 29.11.2021. Since the period of limitation and the period prescribed for condoning the delay had also expired, the Appellate Commissioner dismissed the appeal. Dealing with the same in a batch of cases in **W.P.Nos.25048, 25877, 12738 of 2021 and etc... batch (Tvl.Suguna Cutpiece Center Vs Appellate Deputy Commissioner (ST) (GST) and others)**, dated 31.01.2022, a substantial relief was granted by directing the respondents to restore the Goods and Service Tax registration of all the dealers in as much as the interest of revenue was not protected by keeping such assessees out of the bounds of GST Regime. The operative portion from the said order is reproduced below:

> *221. While exercising jurisdiction, under Article 226 of the Constitution, the powers of the Court to do justice i.e., what is good for the society, can neither be restricted nor curtailed. This power under Article 226 can be exercised to effectuate the rule of law.*
>
> *229. In the light of the above discussion, these Writ Petitions are allowed subject to the following conditions:-*
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> *i. The petitioners are directed to file their returns for the period prior to the cancellation of registration, if such returns have not been already filed, together with tax defaulted which has not been paid prior to cancellation along with interest for such belated payment of tax and fine and fee fixed for belated filing of returns for the defaulted period under the provisions of the Act, within a period of forty five (45) days from the date of receipt of a copy of this order, if it has not been already paid.*
>
> *ii. It is made clear that such payment of Tax, Interest, fine / fee and etc. shall not be allowed to be made or adjusted from and out of any Input Tax Credit which may be lying unutilized or unclaimed in the hands of these petitioners.*

iii. If any Input Tax Credit has remained utilized, itshall not be utilised until it is scrutinized and approved by an appropriate or a competent officer of the Department.

iv. Only such approved Input Tax Credit shall be allowed for being utilized thereafter for discharging future tax liability under the Act and Rule.

v. The petitioners shall also pay GST and file the returns for the period subsequent to the cancellation of the registration by declaring the correct value of supplies and payment of GST shall also be in cash.

vi. If any Input Tax Credit was earned, it shall be allowed to be utilised only after scrutinising and approving by the respondents or any other competent authority.

vii.The respondents may also impose such restrictions / limitation on petitioners as may be warranted to ensure that there is no undue passing of Input Tax Credit pending such exercise and to ensure that there is no violation or an attempt to do bill trading by taking advantage of this order.

viii.On payment of tax, penalty and uploading of returns, the registration shall stand revived forthwith.

ix. The respondents shall take suitable steps by instructing GST Network, New Delhi to mak suitable changes in the architecture of the GST Web portal to allow these petitioners to file their returns and to pay the tax/penalty/fine.

x. The above exercise shall be carried out by the respondents within a period of thirty (30) days from the date of receipt of a copy of this order. xi. No cost. xii.Consequently, connected Miscellaneous Petitions are closed.

4. Considering the same, I am inclined to allow this writ petition by directing the respondents to restore the Goods and Service Tax Registration subject to the petitioner and the respondents complying with the above directions. No cost. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Deputy Commissioner (ST),
(GST Appeal),
Maduari & Tirunelveli,
Madurai District.

2.The Assistant Commissioner (ST),
Thirumangalam Circle,
Thirumangalam,
Madurai District.

+1 CC to M/s.SPL GP (SR-11218[F] dated 10/03/2022)

+1 CC to M/s.M.KANNAN, Advocate (SR-11132[F] dated 10/03/2022)

ORDER MADE IN
W.P(MD).No.4185 of 2022
09.03.2022

PKP/28.03.2022/4P/5C